vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9114 OF 2005

Mega Enterprises & Ors. ... Petitioners

V/s.

Malegaon Municipal Corporation ... Respondent

Mr.M.M. Sathaye for Petitioners
Mr.P.I. Khemani, AGP, for respondent No.2

CORAM: **V.G. PALSHIKAR, Ag.C.J &**
SMT.NISHITA MHATRE, J.

DATED: **JANUARY 19, 2006**

P.C.:

. By this Writ Petition, the Petitioners have made the following prayers:

(a) That record of present matter be called for.

(b) On perusal of the same and further hearing the Petitioner, this Hon'ble court be pleased to issue a writ of mandamus or any other appropriate order/direction/writ in the nature of writ of mandamus and direct the Respondent No.1 to immediately return to the Petitioner, the amount of Rs.67,20,000/- (Sixty Seven Lakh & Twenty thousand Only) with 18% interest from January 2004 till actual realisation

(c) That this Hon'ble court be pleased to issue a writ of mandamus or any other appropriate order/direction/writ in the nature of writ of mandamus and direct the Respondent No.2 to immediately consider the look into the representations given by the Petitioner

for return of the amount of Rs.67,20,000/- (Sixty Seven Lakh & Twenty Thousand Only) to the Petitioner from the Resp. No.1, with 18% interest from January, 2004 till actual relisation.

(d) For cost of the present petition.

(e) For such other and further reliefs as the nature and circumstance this case may require or this Hon'ble Court deems fit in the interest of justice.

2. In effect, the prayer is to decree the claim of the Petitioners for the sum of Rs.67.2 lacs with interest which can be better considered by a civil Court of competent jurisdiction. But the Petitioners do not want to go for a civil Suit on the ground that the remedy of civil Suit would not be efficacious. The suit is required to be filed in the instant case in Malegaon town where the pendency is much less than the writ petitions in this Court. The powers of a civil Court to deal with the acts of illegality and impropriety are no less than the powers of this Court. In our opinion, one possible reason for not going for suit appears to be the dishonest intention of the Petitioners' to avoid payment of court fee on the amount of Rs.67.2 lalcs and get the claim decreed by the High Court thereby denying the respondent-Corporation a legitimate appellate remedy.

3. Such tendencies cannot be encouraged to further

the burden which the Writ Courts in the state already have.

4. The third prayer is for directing the Respondent No.2 to consider and look into the representations made by the Petitioner. Respondent No.2 is the Government of Maharashtra. The Government of Maharashtra can do nothing in the matter of a contract or obligations arising out of that. If it can do anything, the Petitioners are not estopped by going to the State again and again. In our opinion, such writs where alternate, efficacious remedy is available need not be entertained.

5. Hence, the Petition is dismissed with costs of Rs.2,500/-. The registry to take immediate steps to recover the costs.